

organizations of the private sector, and (3) engage in activities of special interest to a voluntary membership or group of participants; examples of which are provided in § 212.6.

(f) *Type 3—Independent Private Organizations.* Independent private organizations which are organized, established, operated and controlled *locally* by common interest groups conducting specific activities that fulfill certain accepted needs or wants of some members of the DoD family, and have no formal connection or affiliation with an organization outside of the installation; examples of which are provided in § 212.6. Local initiative is exercised in securing written permission from the head of the DoD installation for their operation on the DoD installation.

(g) *Subtype of Private Organizations.* For classification purposes this is a relatively homogeneous functional grouping of private organizations, based on one or more of the following characteristics, having similar purposes or objectives, furthering related interests or conducting related activities, and comprising membership or participation of contemporary age levels.

(1) A subtype designation may be applied to more than one type of private organization, since the function being performed on a DoD installation is not limited by the connection or affiliation of the organization(s) comprising the subtype.

(2) For example, the function of community services, as a subtype of private organization, may be carried out through a Type 1 federally sanctioned private organization (Red Cross), a Type 2 affiliated private organization (PTA), or a Type 3 independent private organization (Thrift Shop).

(3) Section 212.6 provides a listing of the eight authorized classifications of private organizations by subtype and furnishes examples. The examples are illustrative and not all-inclusive.

(4) Classification of each private organization by type and subtype is a basis for positive identification of all private organizations and is a means of differentiating from nonappropriated fund instrumentalities.

PART 215—EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES

Sec.

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AUTHORITY: Chapter 15 of title 10 U.S.C. (10 U.S.C. 331 et seq.).

SOURCE: 37 FR 3637, Feb. 18, 1972, unless otherwise noted.

§ 215.1 Purpose and scope.

This part establishes uniform Department of Defense policies, assigns responsibilities, and furnishes general guidance for utilizing DoD military and civilian personnel, facilities, equipment or supplies:

(a) In support of civil authorities during civil disturbances within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof.

(b) In other related instances where military resources may be used to protect life or Federal property or to prevent disruption of Federal functions.

§ 215.2 Applicability.

This part is applicable to all components of the Department of Defense (the Military Departments, Organization of the Joint Chiefs of Staff, Defense Agencies, and the unified and specified commands) having cognizance over military resources which may be utilized in accordance with the policies set forth herein.

§ 215.3 Definitions.

(a) *Civil disturbances* are group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions

and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring the use of Federal armed forces pursuant to the provisions of Chapter 15 of Title 10, United States Code.

(b) *Federal property* is that property which is owned, leased, possessed, or occupied by the Federal Government.

(c) *Military resources* include military and civilian personnel, facilities, equipment, and supplies under the control of a DoD component.

(d) A *Federal function* is any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

§215.4 Legal considerations.

(a) Under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local governments, which have the necessary authority to enforce the laws. The Federal Government may assume this responsibility and this authority only in certain limited instances.

(b) Aside from the constitutional limitations of the power of the Federal Government at the local level, there are additional legal limits upon the use of military forces within the United States. The most important of these from a civil disturbance standpoint is the Posse Comitatus Act (18 U.S.C. 1385), which prohibits the use of any part of the Army or the Air Force to execute or enforce the laws, except as authorized by the Constitution or Act of Congress.

(c) The Constitution and Acts of Congress establish six exceptions, generally applicable within the entire territory of the United States, to which the Posse Comitatus Act prohibition does not apply.

(1) The constitutional exceptions are two in number and are based upon the inherent legal right of the U.S. Government—a sovereign national entity under the Federal Constitution—to insure the preservation of public order and the carrying out of governmental

operations within its territorial limits, by force if necessary.

(i) *The emergency authority.* Authorities prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situations.

(ii) *Protection of Federal property and functions.* Authorizes Federal action, including the use of military forces, to protect Federal property and Federal governmental functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(2) There are four exceptions to the Posse Comitatus Act based on Acts of Congress.

(i) In the cases of each of the first three of those described, paragraphs (c)(2)(i) (a), (b), and (c) of this section, personal Presidential action, including the issuance of a proclamation calling upon insurgents to disperse and retire peaceably within a limited time, is a prerequisite.

(a) *10 U.S.C. 331.* Authorizes use of the militia and Armed Forces when a State is unable to control domestic violence, and a request for Federal assistance has been made by the State legislature or governor to the President. Implements Article IV, section 4, of the Constitution.

(b) *10 U.S.C. 332.* Authorizes use of the militia and Armed Forces to enforce Federal law when unlawful obstructions or rebellion against the authority of the United States renders ordinary enforcement means unworkable. Implements Article II, section 3, of the Constitution.

(c) *10 U.S.C. 333.* Authorizes use of the militia and Armed Forces when domestic violence or conspiracy hinders execution of State or Federal law, and a State cannot or will not protect the constitutional rights of the citizens. Implements Article II, section 3, and the 14th Amendment of the Constitution.